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PENSION INSURANCE RULES IN THE CONSTITUTION OF REPUBLIC INDONESIA

Gayatri Galuh Pertiwi¹, Lanny Ramli²

^{1,2}Department of Administrative Law, Faculty of Law, Universitas Airlangga, Surabaya

*Correspondence author; lanny.ramli@fh.unair.ac.id

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ABSTRACT

BACKGROUND: Law Number 13 of 2003 concerning Manpower which governs the pension program does not provide a comprehensive explanation regarding the pension program. The presence of the Social Security Manpower Agency does not answer the problem related to workers' pension insurance.

AIM: This study aims to find out the performance of Law Number 24 of 2011 concerning the Social Security Organizing Agency and Law Number 13 of 2003 concerning manpower.

METHOD: This type of research is a doctrinal study analyzing the rule of law by explaining difficult fields and then predicting future developments. Next, the statute approach is used to study the laws and regulations relating to the legal issues discussed.

RESULT: Based on the data obtained, the result shows that the pension program in Law Number 13 of 2003 is unclear. Lack of clarity in Law Number 13 of 2003 can be potentially multiple interpretations. The presence of the Social Security Manpower Agency is also less than optimal because the pension insurance program still has the same function as the pension plan program.

CONCLUSION: Improvements in Law Number 13 of 2003 concerning Manpower and Law Number 24 of 2011 concerning the Social Security Organizing Agency are needed because the two laws have not been implemented in accordance with their objectives.

INTRODUCTION

Pension insurance is one of the implementation of social security which aims at the welfare of workers when entering a non-productive period. Social Security for Manpower is a protection for workers in the form of money as a substitute for part of the lost or reduced income as a result of an event or situation experienced by workers (Jemikan, 2018). The presence of this pension insurance is an attempt by the state to provide a place for pensioners to be independent even though they have stopped working. In connection with the pension insurance, Indonesia has a law concerning manpower. However, in Law Number 13 of 2003, regulations related to manpower have not discussed the details of the pension program yet. On the other hand, the presence of the Social Security Manpower Agency discusses about the receipt of benefits for workers who are retired and experience Work Termination.

In article 167 law number 13 of 2003, it actually has discussed about the obligations of employers to workers who have been in retirement age. In addition, article 156 of Law Number 13 of 2003 regulates severance pay. However, the presence of two rules related to the pension program is suspected not to able to accommodate problems in the real place. The incompleteness of these rules causes multiple interpretations in the case resolution process related to the problem.

On the other hand, the program of the Social Security Manpower Agency related to the pension insurance program cannot be compared to the pension insurance program. That is because of differences in the rules between the two, namely regarding whether there are sanctions for program participants. These two rules regarding retirement need to be considered due to the importance of the program for the welfare of workers in Indonesia.

The study of the regulations review related to pension funds is important to do so that effectiveness can be carried out and there are no adverse effects caused by improper stewardship (Tilba and Reisberg, 2019). As an effort to extract information on related topics, this research uses the doctrinal type. Through this doctrinal research, researchers can analyze the legal rules relating to retirees. Furthermore, the difficult field is discussed in order to predict the future development of rules. The data collected are laws and regulations relating to the rights of workers who have entered retirement period.

Incompatibility of rules with its purpose of making can cause problems later on. As a preventive effort, the incompatible rules are reviewed so that the functions can run optimally. The review related to the rules in Indonesia at this time can provide suggestion so the rules involving workers' rights can go well. In this research, the topic discussed is insurance for workers who have been in retirement period. Therefore, the performance of Law Number 24 of 2011 concerning the Social Security Organizing Agency and article 167 of Law Number 13 of 2003 concerning manpower needs to be reviewed.

RESEARCH METHOD

This research is doctrinal type which analyzes the rule of law, explains the difficult field, and then predicts future developments (Marzuki, 2017; Ramadhani, Supanto and Hartiwingsih, 2019). In research using statute approach, the variables used are the laws and regulations concerned with the legal issues under discussion. These variables are Law Number 24 of 2011 concerning the Social Security Organizing Agency and article 167 of Law Number 13 of 2003. The use of this statute approach requires an empirical approach to support the data that is used (Abrianto et al., 2019). Both are paired with primary legal materials sourced by statutory regulations and other legal documents. In addition, secondary legal materials sourced by literature related to the topic are also used. The use of sources from related news aims to make social impacts in the complex and plural context of Indonesian law taken into consideration (Wiratraman, 2019).

RESULT AND DISCUSSION

Law Number 13 of 2003 concerning Manpower

The presence of Law Number 13 of 2003 concerning Manpower has given a new nuance in the realm of manpower or employment law, namely (Husni, 2010):

1. Align the term of laborers / workers, the term of boss is changed to be an employer, this term has long been sought to be changed to better suit the Pancasila Industrial Relations.
2. Replace the term of labor agreement with the term of Collective Labor Agreement (CLA) because labor agreement comes from a liberal country which often creates a conflict between the workers and employers.
3. Provide equality between male and female workers, especially for night workers in accordance with the times. Based on this regulation, women workers are no longer prohibited from working at night. Employers are given signs that must be obeyed.
4. Provide adequate sanctions and use minimum and maximum limits, so that it further guarantees legal certainty in its enforcement.
5. Regulates administrative sanctions ranging from reprimands, written warnings, restrictions on business activities, freezing of business activities, cancellation of approvals, cancellation of registrations, temporary suspension of part or all of production equipment, and revocation of licenses. In the previous laws and regulations, these sanctions were not regulated.

Working is the right of every citizen and to get a decent income as stipulated in Law Number 13 of 2003 concerning Manpower (Fathoni, 2018). As mentioned in the consideration of Part Considering letter d of Law Number 13/2003, it states that:

"Protection of workers is intended to guarantee the basic rights of workers / laborers, equal opportunities, and treatment without discrimination on any basis to

realize the welfare of workers / laborers and their families by still keeping an eye to the development of the progress of the business world".

The definition of the pension program according to Law Number 13 of 2003 is unclear. The pension program plays an important role in the calculation of severance pay for workers who have entered retirement period. According to Law Number 11 of 1992 concerning Pension Funds, the definition of a pension program is the program that seeks pension benefits for participants. The question arises here, which pension plan can be counted as part of severance pay.

Based on Article 167 paragraph (5) of Law Number 13 of 2003, it is stated that:

"In the context of the employer not including workers / laborers who have experienced work termination due to retirement age in the pension program, the employer is obliged to give workers / laborers double severance pay of the provisions in Article 156 paragraph (2), the wage of work period appreciation of the provisions in Article 156 paragraph (3), and compensation wage according to the provisions of Article 156 paragraph (4). "

In the provisions of Article 167, it states that the pension program has an effect in the calculation of severance pay for workers experiencing Work Termination due to retirement period. However, the provisions of the pension plan are not mandatory. There are no sanctions for employers who do not include their workers in the pension program.

Law concerning Social Security Organizing Agency

Indonesia has Law Number 24 of 2011 concerning the Social Security Organizing Agency. Furthermore, the law was followed by government regulation number 45 of 2015. According to government regulation number 45 of 2015 regarding the implementation of the pension insurance program, cash pension benefits are received every month. The recipients of the pension insurance are as follows.

- a. Old-age pension: receive after a participant enters retirement age until death;
- b. Disability pension: received if a participant experiences disability due to an accident or illness until death;
- c. Widow's or widower's pension: received by the participant which is a widow / widower until death or remarriage;
- d. Children's pension: received by the heirs of participants until they reach the age of 23 (twenty-three) years or get married;
- e. Parent's pension: received by the parents of single heirs until a certain time limit in accordance with statutory regulations.

Based on Article 1 number 1 PP Number 45 of 2015, the purpose of the existence of the Pension Insurance program is to maintain a decent degree of life at the time of loss or reduction in income because entering retirement period or experiencing permanent total disability. Furthermore, participant of pension insurance according to Article 2 paragraph (1) PP Number 45 of 2015 is every person who works by receiving wages or other forms of compensation (workers). Workers consist of:

- a. Workers who work for the Employers of state administrators; and
- b. Workers who work for Employers other than state administrators.

Based on Article 3 paragraph (4) PP Number 45 of 2015, membership period in pension insurance will end when:

- a. Die; or
- b. Reach retirement age and receive accumulated contributions and the results of the development at once.

From this pension program, there is a pension benefit such as the amount of money paid every month to participants entering retirement age, participants experiencing permanent total disability, or the heirs of participants who have died. So, participants who deserve to receive pension benefits are (Article 14 paragraph (1) PP Number 45 of 2015):

- a. Participants;
- b. 1 (one) legal wife or husband in accordance with laws and regulations;
- c. Maximal 2 (two) children; or
- d. 1 (one) parent.

However, the enforcement of “who the pension benefit is given” is alternative which means that if the pension participants enter retirement age, the participant can get a pension benefit. On the other hand, if pension participants passed away, the heirs were entitled to get pension benefits.

The amount of pension benefits provided by the Social Security Manpower Agency to participants or the heirs is a minimum of Rp.300,000.00 (three hundred thousand rupiahs) per month and a maximum of Rp.3,600,000.00 (three million and six hundred thousand rupiahs) every month (Article 18 paragraph (1) and paragraph (2) PP Number 45 of 2015). However, the amount of pension benefits can change according to the general inflation rate of the previous year. In PP Number 45 of 2015, it regulates 5 types of pension benefits as follows:

- a. Old-Age Pension;
- b. Disability Pension;
- c. Widow’s or Widower’s Pension;
- d. Children’s Pension or
- e. Parent’s Pension.

According to article 28 PP Number 45 of 2015, the amount of pension insurance contributions is three percent (3%) of wages per month. These contributions must be collected by the employer and deposited to the Social Security Manpower Agency every month. Pension insurance contributions are borne jointly by employers and participants. Contributions of 2% (two percent) of wages are borne by the employers and contributions of 1% of wages are borne by the participants.

Pension insurance program was made to meet the goal of maintaining a decent living when wages or income are lost. Making this pension insurance has advantages, namely that pension benefits will certainly have a minimum and maximum limit received by participants. Pension insurance for workers has an important role. Its presence is an effort that relies on workers' awareness to divert risks during their tenure, especially in Indonesia, which still lacks awareness of insurance (Eny Prihtiyani, 2012). Therefore, the role of the government as a regulator is very necessary in making a rule requiring workers to get guarantees or insurance.

In the provisions of TAP MPR Number X/MPR/200 states that the president in his capacity has the task to establish a social security system (Pramukti and Panjaitan, 2016). Then, the intended social security is formulated in Law Number 40 of 2004 concerning the National Social Security System used as the basis to organize public legal entity, the Social Security Organizing Agency. However, the existence of the Social Security Manpower Agency does not rule out the possibility of workers being included in insurance program that is held other than the government. As entering retirement age, workers are entitled to get pension benefits in the form of mandatory old-age pension and pension insurance. Workers can also be included in voluntary insurance, the Pension Funds Program. Pension funds and union funds have become a driving force in diverse shareholder activism (Webber, 2019).

The two types of insurance mentioned above are complementary. Compulsory insurance only meets the basic needs of a life while voluntary insurance complements those basic needs. In terms of the employers, the appearance of the pension insurance program plays an important role in the implementation of social security programs. If the employers' obligation is to register their employees as participants and participate in the Pension Insurance program of the Social Security Manpower Agency, it cannot be classified as a Pension Program in the Labour Laws, then the employers must include their employees in the Pension Insurance Program and the Pension Funds Program. These provisions can be made by the employers if they do not want to be subject to the provisions of Article 167 of Law Number 13 of 2003. In other words, the costs incurred by the employers will increase with the participation of 2 (two) types of the Pension Program so that the profit of a company will be reduced caused by obligation which is increases due to the existence of mandatory programs from the Government and also voluntary programs from the private sector.

In terms of high labor productivity, safe investment climate, and cheap labor wage, workers deserve workers guarantee. According to contributions of the compulsory pension program from the Social Security Manpower Agency, the employers must pay 2 (two) types of contributions:

1. JHT contributions, amounting to 3.7% (three point seven percent), calculated from the wages of workers per month;
2. JP contributions, amounting to 2% (two percent), calculated from the wage of workers per month.

The success of program is based on how much the participation is between the employers and the workers as participants in the Social Security Manpower Agency. By making the latest program, the Pension Insurance program, it can be seen how much the registration is from the employers and workers. Although the program of the Social Security Manpower Agency is mandatory and contains of sanction elements in it, there are still many companies that do not register their workers in this Pension Insurance program. From 119 (one hundred and nineteen) State-Owned Enterprises in Indonesia, 40 companies are listed as not participating in the Pension Insurance program and avoiding payment of 2 (double) contributions to the Pension Insurance program (Fiki Ariyanti, 2016).

The appearance of pension insurance by the Social Security Manpower Agency requires employers to include all workers as program participants. Based on this policy, the pension insurance is mandatory because there are administrative sanctions for employers who violate these rules. In carrying out and providing legal protection, a media for its implementation which is often referred to legal protection. It is divided into two types that can be understood, as follows (Legal Angle, 2015):

1. Preventive Legal Protection. In this type, legal subjects get the opportunity to raise the objections or opinions before a government decision gets a definitive form. The aim is to prevent disputes. Preventive legal protection has a big meaning for governmental action based on freedom of action because the government is encouraged to be cautious in making decisions based on discretion preventive legal protection due to the existence of preventive legal protection. In Indonesia, there are no specific arrangements regarding preventive legal protection.
2. Repressive Legal Protection. It aims to resolve disputes (Buntman, 2019). The handling of legal protection by the General Courts and Administrative Courts in Indonesia belongs to this category of legal protection. The principle of legal protection against government actions rests and stems from the concept of the recognition and protection of human rights.

Meanwhile, the forms of administrative sanctions which will be imposed on employers if they violate the provisions in the legislation related to pension guarantees will be subject to administrative sanctions as follows:

- a. Written warnings are given 2 (twice) for a maximum period of 10 (ten) working days.

- b. Fines are given for a maximum period of 30 (thirty) days since the end of the second written warning sanction ends.
- c. Not getting certain public services.

So, if various types of legal protection are associated with forms of administrative sanctions, forms of administrative sanctions in the form of written warnings and fines are preventive legal protection because those aim to prevent violations for employers, one of which is not to register workers in the pension insurance program. Then, administrative sanctions in the form of not getting certain public services (active action) is repressive legal protection because those aim to stop the violations that occur.

CONCLUSION

The pension program in Law Number 13 of 2003 is unclear, so that it has the potential to cause multiple interpretations which can lead to problems someday. On the other hand, the pension insurance program organized by the Social Security Manpower Agency cannot be classified as a pension program. The substitution cannot be carried out because the pension program is voluntary while the Social Security Organizing Agency is a mandatory provider of pension insurance programs. Both Law Number 13 of 2003 and the rules relating to the pension insurance program organized by the Social Security Manpower Agency should be reviewed considering the implementation has not been running optimally.

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